

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

4 IN RE: § CASE NO. 23-00645-MP
5 § MCALLEN, TEXAS
6 PROFESSIONAL FEE MATTERS § THURSDAY,
CONCERNING THE § DECEMBER 21, 2023
JACKSON WALKER LAW FIRM § 9:00 A.M. TO 9:56 A.M.

STATUS CONFERENCE (VIA GO TO MEETING)

BEFORE THE HONORABLE EDUARDO V. RODRIGUEZ
UNITED STATES BANKRUPTCY JUDGE

12 APPEARANCES: SEE NEXT PAGE
13 CASE MANAGER: JEANNIE CHAVEZ
14 ERO: ANA CASTRO

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FOR RAW OILFIELD SERVICES,
LLC: Kurt Stephen, Esq.

1 MCALLEN, TEXAS; THURSDAY, DECEMBER 21, 2023; 9:00 A.M.

2 THE COURT: All right. Good morning. Today is
3 December 21st, 2023. This is Judge Rodriguez.

4 I'll take appearances in 23-645, Miscellaneous
5 Proceeding.

6 Ms. Eitel?

7 MS. EITEL: (No audible response.)

8 THE COURT: Ms. Eitel?

9 MS. EITEL: Yes, Your Honor.

10 THE COURT: Please enter your appearance.

11 MS. EITEL: I'm just in listening mode today.

12 Ms. Sall will be presenting for the United States Trustee.

13 THE COURT: Thank you.

14 Mr. Boland?

15 MR. BOLAND: Good morning, Judge. Jason Boland of
16 Norton Rose Fulbright on behalf of the Jackson Walker firm.

17 THE COURT: Thank you.

18 Mr. Greendyke?

19 MR. GREENDYKE: Good morning, Judge. Bill
20 Greendyke of Norton Rose Fulbright also on behalf of Jackson
21 Walker.

22 THE COURT: Thank you.

23 Ms. Harrison?

24 MS. HARRISON: Good morning, Your Honor. Julie
25 Harrison, also of Norton Rose Fulbright on behalf of Jackson

1 Walker.

2 THE COURT: All right. On the phone, we have
3 Ms. Barcomb.

4 MS. BARCOMB: Good morning, Your Honor. Alicia
5 Barcomb on behalf of the United States Trustee. I'm also
6 just observing today's proceedings.

7 Thank you.

8 THE COURT: Thank you.

9 Mr. Jenkins?

10 MR. JENKINS: Good morning, Your Honor. William
11 Jenkins, General Counsel for Jackson Walker.

12 THE COURT: Thank you.

13 Ms. Harrison? Oh, we already took your
14 appearance. Thank you.

15 Mr. Johnson?

16 MR. JOHNSON: Good morning, Your Honor. Chris
17 Johnson of Diamond McCarthy. I am listening only this
18 morning.

19 THE COURT: Do you have an interest in this case?

20 MR. JOHNSON: Your Honor, I'm not appearing on
21 behalf of a client this morning.

22 THE COURT: All right. Pursuant to Rule 9017 of
23 the Bankruptcy Local Rule, you're not allowed to appear at
24 these hearings unless you have an interest or a stake. If
25 you qualify under that Rule, you're certainly allowed to

1 appear in the courtroom live or get a copy of the transcript
2 or listen to the audio file, but I'm going to disconnect
3 your line, Mr. Johnson.

4 MR. JOHNSON: Thank you, Your Honor. I'll drop.

5 THE COURT: Thank you.

6 Ms. Sall?

7 MS. SALL: Thank you, Your Honor. Can you hear
8 me?

9 THE COURT: Yes.

10 MS. SALL: I apologize. I'm trying to get my
11 camera to work, but I haven't been able to so far. I am
12 reaching out to one of my colleagues to get that done.

13 I'm appearing on behalf of the US Trustee.

14 THE COURT: Thank you.

15 Mr. Epstein?

16 MR. EPSTEIN: Good morning, Your Honor. Kevin
17 Epstein, United States Trustee.

18 THE COURT: Thank you.

19 I have an unidentified caller with the last four
20 numbers 5527. Please identify who you are.

21 (No audible response.)

22 THE COURT: All right. Your phone will be
23 disconnected.

24 (Indiscernible).

25 THE COURT: Ms. Garza, Vianey Garza.

1 MR. GARZA: Good morning, Your Honor. Vianey
2 Garza for the US Trustee, also just observing today's
3 hearing.

4 THE COURT: Thank you.

5 Also I have an unidentified caller with the last
6 four digits of 0711. Please identify who you are and what
7 interest you have in this proceeding.

8 MR. GOUVEIA: Good morning, Your Honor. This is
9 Jordan Gouveia. I represent the Plan Administrator in the
10 Katera case, just monitoring today.

11 THE COURT: Okay. Do you have an interest in this
12 Miscellaneous Proceeding?

13 MR. GOUVEIA: Katera is one of the cases
14 implicated by the proceeding, but we've not appeared or
15 taken a position, Your Honor.

16 THE COURT: Okay. Can you spell your last name,
17 please?

18 MR. GOUVEIA: Yes, Your Honor. It's G-O-U-V-E-I-A.

19 THE COURT: Thank you.

20 MR. GOUVEIA: Thank you.

21 THE COURT: The next caller is 1696, please
22 identify who you are.

23 MR. OSTENER: Good morning. My name is Evan
24 Ostener (phonetic). I'm a reporter at Bloomberg Law.

25 THE COURT: Okay. Do you have any interest in

1 this case?

2 MR. OSTENER: I was hoping to report on it.

3 THE COURT: All right. You don't qualify under
4 Local Rule 9017. I'm going to disconnect your line, but
5 you're free to appear at these hearings in person, get a
6 copy of the audio tape, or also the transcript.

7 I'm going to disconnect your line. Thank you.

8 Next unidentified caller is 4261. Please identify
9 who you are.

10 MS. SLATER: Good morning, Your Honor. Stephanie
11 Slater, I represent the Plan Administrator in the Katera
12 cases, similar to Mr. Gouveia. I'm just observing this
13 morning.

14 THE COURT: All right. And can you please spell
15 your last name?

16 MS. SLATER: Yes, my last name is Slater,
17 S-L-A-T-E-R.

18 THE COURT: Thank you.

19 And Mr. Stephen?

20 MR. STEPHEN: Good morning, Your Honor. Kurt
21 Stephen, I represent R-A-W Oil Spill Services, LLC.

22 THE COURT: Is that part of this Miscellaneous
23 Proceeding?

24 MS. SLATER: I believe it is, Your Honor, because
25 it would affect my client in that case.

1 THE COURT: All right. Thank you.

2 All right. Before we begin, I do want to bring up
3 a preliminary matter. I do want to apprise the parties
4 about nine years ago now, Mr. Greendyke was part of a Merit
5 Selection Committee that interviewed me and other applicants
6 for the position I was ultimately selected for.

7 Since that time -- and that was the first time I
8 met Mr. Greendyke, and since that time only occasionally
9 have run into him at public CLE events. We have not
10 otherwise communicated or socialized in any way.

11 Notwithstanding, I feel I can fairly and
12 impartially adjudicate the matter presently before me.

13 And Mr. Greendyke is present here today, and feel
14 free to dispute anything I just said, Mr. Greendyke.

15 MR. GREENDYKE: I totally agree, Judge. Thank
16 you.

17 THE COURT: All right. All right. Thank you.

18 So today's -- first of all, I want to thank
19 everybody for their appearances. I know this is getting
20 into the Holiday Season and I appreciate you being here
21 today to discuss the Order I issued.

22 Let's start with Ms. Eitel.

23 MS. EITEL: Your Honor, again, Ms. Sall is
24 appearing for the US Trustee today.

25 THE COURT: Ms. Sall?

1 Okay. Thank you.

2 Ms. Sall?

3 MS. SALL: Yes, sir. Can you hear me?

4 THE COURT: Yes, I can.

5 MS. SALL: I'm still having camera issues, Your
6 Honor. I apologize profusely.

7 THE COURT: That's okay. We can hear you just
8 fine.

9 MS. SALL: All right. How would you like to
10 proceed, Your Honor? Do you want me to start answering some
11 of the questions that you have in the Order that you
12 entered?

13 THE COURT: Yes. I think that would be helpful.

14 Thank you.

15 MS. SALL: All right, Your Honor.

16 So I am literally going through the list of your
17 questions in paragraph 2(a) --

18 THE COURT: Okay.

19 MS. SALL: -- of your Order and that would be page
20 No. 2. And the first question addressed to us was whether
21 we needed to or wish to supplement the arguments that we
22 have made in support of our motions to withdraw the
23 reference.

24 On behalf of the US Trustee's Office, we do not
25 need to supplement any evidence; however, what I would offer

1 is that this question of what related matters may be, if
2 they were to be sent up to the District Court or another
3 court, the US Trustee has prepared or has a preliminary
4 list. We have not had the opportunity to share that with
5 the other side for Jackson Walker.

6 However, that would be the only thing that on
7 behalf of the US Trustee we would provide to the Court, if
8 that would be helpful?

9 THE COURT: Okay. And this would affect your
10 arguments raised at the December 5th hearing regarding the
11 withdrawal of the reference?

12 MS. SALL: It would specifically -- it would
13 specifically answer questions regarding when and if the
14 withdrawal is granted. Our recommendation has been what are
15 the matters that would be referred?

16 And so we have loosely talked about the 60(b)
17 motion, but there are other pleadings, for instance, you
18 know, all professional fee applications of Jackson Walker,
19 whether they're interim or final.

20 So it would be a very short list so that there is
21 some understanding of what matters relate to the 60(b)
22 motion.

23 THE COURT: Okay. And how would you like to treat
24 that? Would you just want to tell me on the Record now, or
25 do you want to file some supplemental pleading?

1 MS. SALL: I can certainly tell the Court now.
2 But in the interest of being fair to Jackson Walker, perhaps
3 we would want to either file something for the Court. Maybe
4 we can file something that's jointly approved or agreed.

5 So I would proceed in whichever way the Court
6 would want.

7 THE COURT: Mr. Boland?

8 MR. GREENDYKE: I'm going to take the lead, Judge.

9 THE COURT: Okay.

10 MR. GREENDYKE: This is Bill Greendyke on behalf
11 of Jackson Walker.

12 In answering your question with regard to
13 paragraph 2(a), we do not wish to supplement our arguments
14 and we're prepared for the Court to submit the report and
15 recommendation and we would agree to be bound in all 17
16 cases, whatever decision the US District Court makes on the
17 motion to withdraw the reference.

18 In response to what Ms. Sall just talked about,
19 obviously we would prefer to see something filed by them
20 about what they wish to do. I think that really sort of
21 coordinates with some other accommodations. We would agree
22 that the District Court ruling on withdrawal of reference in
23 the 17 cases should be binding on all new cases opened and
24 we request that any new cases have similar CMOs regarding
25 any discovery and pretrial orders in this matter.

1 We'd also want to clarify the meaning of
2 "discovery and pretrial matters." At a status conference
3 last week with Judge Isgur, which occurred actually just a
4 couple of hours after this Court's recusal hearing in the 4E
5 case, he indicated his belief that procedural matters are to
6 be determined by Your Honor under the Miscellaneous
7 Proceeding in that he, Judge Isgur, would retain all
8 substantive matters, and that's probably something that you
9 need to be aware of Judge Isgur having said and just make
10 sure that you and Judge Lopez and Judge Isgur are on the
11 same page about what's going up and what's being handled.

12 So that's a lot of gab, I'm sorry, but again, to
13 answer your question, we totally do not need to supplement
14 our arguments that were made before this Court in the prior
15 hearing.

16 THE COURT: All right. Thank you.

17 What about the US Trustee's suggestion or request
18 to supplement its withdrawal motion with the clarification
19 of what other matters are to be? How would you like to have
20 that handled?

21 MR. GREENDYKE: I'm totally happy having
22 discussions with Ms. Sall and Ms. Eitel. I do think it
23 makes sense to have some type of filing, because again, we
24 didn't see this coming. We don't know what's on their list.
25 I think that probably makes sense would be to have some kind

1 of subsequent filing.

2 THE COURT: All right. And Ms. Sall, if I
3 provided a deadline of December 28th, can it be accomplished
4 by then?

5 MS. SALL: Your Honor, we would have a problem
6 with that deadline.

7 THE COURT: Mr. Greendyke?

8 MR. GREENDYKE: Same here, Judge. That's fine.

9 THE COURT: Okay. So Ms. Sall, you can either
10 file -- my preference would be file some kind of a joint
11 stipulation, but obviously if the parties can't agree, they
12 can file separate documents and I'll be happy to review
13 that.

14 MS. SALL: All right. Your Honor, do you want me
15 to proceed to No. 2?

16 THE COURT: Well, you haven't answered --

17 MS. SALL: I'm sorry.

18 THE COURT: -- you haven't answered the rest of
19 the question in 2(a).

20 MS. SALL: Oh, all right. Yes, sorry, Your Honor.

21 We -- at that point you would be agreeable to be
22 bound by whatever determination the judgment in the affected
23 cases.

24 THE COURT: And okay, the 17 are all cases,
25 including future cases?

1 MS. SALL: Yes, Your Honor.

2 THE COURT: Which one is it, Ms. Sall?

3 MS. SALL: Both.

4 THE COURT: Okay. Thank you.

5 MS. SALL: Both.

6 THE COURT: All right. Let's go ahead and move on
7 to (b).

8 Ms. Sall?

9 MS. SALL: Yes, Your Honor. So on item No. 2(b),
10 the Court has requested us to discuss our intentions of
11 filing additional motions, 60(b) motions. And the answer,
12 of course, is correct. Yes, we would be. There has been
13 some reference to 26 additional motions, but the way I want
14 it to at least clarify is that we're not seeking to file
15 these motions in the affected cases as is provided on 2(b).
16 The affected cases already -- the motions have already been
17 filed in the 17 cases.

18 So what I wanted to discuss with the Court today
19 is the different (glitch in the audio) cases and so a
20 potential timeline on those.

21 I want to refer the Court on Exhibit B in the
22 60(b) motions, those are the closed -- what I call the
23 "closed" cases and Your Honor, if you want me to make a
24 specific reference, I can do that to the Brilliant case with
25 Exhibit B up here. It's ECF No. 264.

1 THE COURT: All right.

2 MS. SALL: And I believe it is in page 28.

3 So on Exhibit B, we reference or identify nine
4 cases and these cases are going to require the UCC to reopen
5 cases, and that's not a small stake, Your Honor. We have
6 been discussing the logistics with Jackson Walker to
7 minimize the impact of reopening those cases.

8 There could be other possibilities. You know,
9 we're not sure there are any, short of reopening cases, but
10 we are open to, you know, suggestions that could come short
11 of that. But at this point we have not been convinced that
12 we have other -- another option other than open these cases.

13 So with that being said and given the Holidays,
14 you know, our best timeline for accomplishing the filing of
15 those additional nine motions would put us probably towards
16 the end of December. I have not discussed this deadline
17 with Jackson Walker, so we'd definitely like to hear their
18 thoughts on that.

19 THE COURT: So we're only talking about nine
20 additional cases?

21 MS. SALL: For the bucket, which is I consider the
22 Exhibit B, which is the cases that are closed and need
23 reopening.

24 THE COURT: Okay. And will there be any
25 additional cases besides those, those additional nine?

1 MS. SALL: Yes, Your Honor.

2 THE COURT: How many more?

3 MS. SALL: I would now refer to the Court to
4 Exhibits C and D and those cases are the cases in which
5 Judge Jones mediated and -- Your Honor, if you give me a
6 second I might be able to tell you roughly the number of
7 cases in those.

8 (Pause in the proceedings.)

9 MS. SALL: Okay. So there are seven open cases.
10 That's Exhibit 60 and then two closed cases for a total of
11 nine.

12 THE COURT: Okay.

13 MS. SALL: And those cases I will describe them as
14 having more difficult cases in the sense that they're more
15 fact-intensive in the interest of discovery for Jackson
16 Walker to be able to formulate a position. And after
17 sending a proper pleading to the Court, the timeline on that
18 at this point, again, our best guess would be, you know,
19 possibly some time in March, Your Honor.

20 THE COURT: Okay. Any other cases besides those
21 18?

22 MS. SALL: At this point I'm not aware of any. If
23 Ms. Eitel wanted to comment on that, I will welcome her
24 comments on that.

25 THE COURT: Okay. Thank you.

1 Ms. Eitel?

2 MS. EITEL: Sure, Your Honor. We believe that's
3 the entire universe, but we have not concluded our
4 discovery, but based on our initial review of the files,
5 those 30 -- those additional 18 cases on top of the 17 seem
6 to be the universe. We respect to reserve our rights should
7 the facts reveal a different understanding at a future date.

8 THE COURT: Of course. Thank you.

9 Mr. Greendyke?

10 MR. GREENDYKE: Thank you, Judge.

11 We really have no comment on timing. I think the
12 things that Ms. Sall talked about in terms of January and
13 March and maybe even leaving an open door so what Ms. Eitel
14 said is fine with us. We'd just would like to reserve our
15 right to object any motion to reopen the case, depending on
16 the facts. Again, you know, we haven't gone through this in
17 great detail with the US Trustee and like I said, we have no
18 problem with the proposed timing subject to whatever we
19 might agree upon later with them. We just want to reserve
20 our right to object to a particular case being reopened if
21 we think the facts do not warrant such occurrence to happen.

22 THE COURT: Of course.

23 MR. BOLAND: And Your Honor, if I may? We're
24 hearing some of this for the first time real time, so
25 apologies for the multiple rangers, if that's okay with Your

1 Honor.

2 THE COURT: That's fine -- perfectly fine with me.

3 Thank you.

4 Go ahead.

5 MR. BOLAND: Thank you, Judge.

6 The only concern I would potentially have would be
7 as it relates to 2(d), which we haven't gotten into yet
8 because we view the standing of an indispensable party as a
9 critical threshold issue that I know Your Honor is
10 interested in. Judge Isgur was interested in it.

11 And if motions are going to be filed potentially
12 months later, what we think is appropriate is to figure out
13 the universe of folks who have that interest at the outset
14 to make sure they're involved with the outset in that
15 discovery process so that we don't run into issues later.

16 THE COURT: I think that makes perfect sense.

17 And that kind of led to my next question is about
18 commencing discovery. My initial thinking is that we should
19 hold off on opening discovery until all these issues have
20 been resolved. Does anybody disagree with me?

21 Ms. Sall?

22 MS. SALL: Yes, Your Honor. You know, I guess if
23 you're thinking about formal discovery, you know, that might
24 be correct. We already have started informal discovery with
25 Jackson Walker and the reason we would want to continue

1 proceeding with discovery is for the very reason that there
2 are some cases in which we need to try to formulate our
3 position based on, you know, timeline, you know, knowledge
4 and collaborating, you know, certain things that we have
5 learned from different, you know, parties or witnesses, if
6 you will.

7 And so it is critical for us to continue doing
8 discovery so as not to hold up the process.

9 THE COURT: I have no problem with the parties
10 conducting informal discovery. I just don't want to impose
11 any deadlines on discovery, filing of dispositive motions,
12 designated experts, things like that if we don't have all
13 the indispensable parties before us, and thereby prohibit
14 them from participating in this process.

15 And that really was my question. I just want to
16 hear from the parties about that.

17 Mr. Boland?

18 MR. BOLAND: Your Honor, I'm not sure I follow the
19 question. I mean, we are more than happy to participate in
20 informal discovery. We made that clear to the US Trustee
21 when the motions were filed, probably two days later, Your
22 Honor. So we're happy to provide information on a
23 consensual basis to keep the process moving forward. What
24 we don't want to have happen, Your Honor, is obviously
25 having depositions when not all the parties and the world of

1 folks that are interested are in the same proceeding, Your
2 Honor.

3 THE COURT: Right. And that was -- I guess that
4 was my concern. Maybe I just stated it not clear enough.

5 I don't want to issue -- I'm hesitant to issue a
6 Scheduling Order, you know, with specific deadlines if all
7 the parties are not currently before the Court. That's what
8 I'm asking about, if everybody is in agreement with that;
9 otherwise, I'm happy to hear arguments to the contrary.

10 MS. SALL: Your Honor --

11 MR. GREENDYKE: Judge, this is Bill --

12 THE COURT: Mr. Greendyke?

13 MR. GREENDYKE: I would just say, Judge, this is
14 Bill Greendyke. I think what you're saying makes total
15 sense.

16 THE COURT: And like I said, I'm not going to
17 prohibit the parties from conducting informal discovery, as
18 long as they're being cooperative and I have no problem with
19 that all.

20 Ms. Sall --

21 MS. SALL: Your Honor?

22 THE COURT: -- do you wish to address the Court?

23 MS. SALL: Yes. Yes, Your Honor. We actually do
24 have some discovery that's ready to be sent to Jackson
25 Walker and again, we have been doing this with their

1 cooperation. But this is discovery that's going to be sent
2 in accordance with the, you know, Federal Rules.

3 And I guess my question here would be, you know,
4 we want to continue -- we don't need a deadline, if you
5 will. But what we wonder -- or I would be asking this Court
6 is we're going to be sending those discovery requests that I
7 show and then they may go out as quick as next week.

8 And you know, there's some interesting terms that,
9 you know, respond and things go from informal to not
10 informal, can we come back to you to try to resolve those
11 issues?

12 THE COURT: Mr. Boland?

13 MR. BOLAND: Your Honor, I'm thinking out loud
14 here. We've had very productive and collegial conversations
15 with the US Trustee since the filing of the motions, Your
16 Honor. I fully expect that to continue. We've encouraged
17 them to send us whatever requests they want to send and we
18 would respond and produce documents or be responsive to
19 whatever the discovery request was promptly.

20 I'm envisioning that those conversations will
21 continue and we'll be able to resolve most of our
22 differences. We have no problem coming back to Your Honor
23 under an informal discovery basis if there's a hiccup along
24 that process, Judge.

25 THE COURT: Yeah, you know, I have to say this,

1 this is a pretty unusual request, but I understand. I
2 understand why the US Trustee is asking because, you know, I
3 also understand that the parties could reasonably disagree
4 what needs to be produced or who needs to be sitting for a
5 deposition.

6 Again, my concern is, you know, exclusion of
7 parties that should be here and participating in this
8 process. If it's going to get to that level, I'm concerned
9 that parties are going to be excluded from that process and
10 listening in to the Court's ruling on things of that nature.

11 So I'm hesitant to go down that road. Certainly
12 if it gets down to that, I'll certainly entertain a motion
13 and we'll make that decision down the road, but I just want
14 to let the parties know that, you know, I'm hesitant to do
15 that at this point since we don't have everybody before us.

16 MS. SALL: Your Honor?

17 MR. BOLAND: Your Honor, we're going to -- go
18 ahead, Ms. Sall.

19 MS. SALL: Yeah, I mean, Your Honor, and if I may?
20 Again, Millie Sall on behalf of the US Trustee.

21 You know, this sort of gets into part (b), and you
22 know, this is where we differ from Jackson Walker and it's
23 primarily our view of who would be an indispensable party
24 for this 60(b) motion, as opposed to what happens after the
25 60(b) motion.

1 And I (glitch in the audio) --

2 THE COURT: Ms. Sall? Ms. Sall?

3 MS. SALL: Yes.

4 THE COURT: Your line is breaking up quite a bit.

5 I don't know if you have it on speaker, you should probably
6 take that off of speaker.

7 MS. SALL: Can you hear me, Your Honor?

8 THE COURT: Yes, I can.

9 Can you please restate what you just said?

10 MS. SALL: Yes, Your Honor.

11 This would, you know, describe to the Court sort
12 of why we think we can move forward to discovery the way we
13 are. It's a complete different view in terms of who might
14 be an indispensable party for the 60(b) motion and that's
15 where we differ, you know, from Jackson Walker.

16 Again, we would be entering into 2(d) at this
17 point. If the Court is, you know, ready for that, I'm happy
18 to, you know, explain to the Court our views on the
19 indispensable parties and the discovery potentially that may
20 be needed for the 60(b) motion only.

21 MR. BOLAND: And Your Honor, before we get to the
22 2(d) conversation, we're hesitant, too, Your Honor. We
23 share Your Honor's views about we want to do this once. We
24 want to sit for a deposition. We want to produce documents
25 one time through the same request, et cetera.

1 We just have an interest in obviously moving this
2 proceeding along, Your Honor. It's obviously very important
3 to my client and we're eager to make sure that this just
4 doesn't linger unnecessarily.

5 THE COURT: Right. And like I said, informal
6 discovery usually doesn't come back to the Court for rulings
7 and that's why I'm hesitant to do that. You know, I'm happy
8 to issue a Scheduling Order if we can limit it in some way
9 that doesn't exclude any other parties. But I'm having
10 difficulty envisioning that happening, if somebody could --
11 if, Ms. Sall, you can help me understand what you want to do
12 about that, I'll be happy to entertain that.

13 MS. SALL: Yes, Your Honor.

14 And I think that perhaps Mr. Boland intentionally
15 just brought something up that I wanted to address with the
16 Court and perhaps with my position, but in terms of the
17 Miscellaneous Proceeding, you know, it was open because the
18 US Trustee filed a 60(b) motion and motions to withdraw the
19 reference.

20 But I wanted to also alert to the Court that there
21 are other parties who have filed joinders to our 60(b)
22 motion in a few cases, and they're even -- there's even at
23 least one or two parties who have filed their own 60(b)
24 motions.

25 So again, this may be just a housekeeping

1 question, but what do we do with those parties? Are those
2 parties -- are those motions also going to be coming into
3 this proceeding, you know, such that those parties are
4 allowed to participate?

5 THE COURT: I think that's a very good question.
6 I'm only aware of one joinder. I think it's in the 4E case.
7 And also one additional Rule 60 motion brought by the
8 Maestas party and also in that same case.

9 At this point it's up to the presiding judge to
10 make that determination. You know, I think the parties
11 would need to file motions in that particular proceeding to
12 argue whether or not that should be added -- that case
13 should be added to the Miscellaneous Proceeding.

14 MR. BOLAND: And --

15 THE COURT: Mr. Boland?

16 MR. BOLAND: Your Honor, I was just going to --
17 you're absolutely correct. What's out there right now is a
18 joinder in the 4E cases, a separate motion by the Maestas
19 parties and then there's a joinder in the Chesapeake cases,
20 but that's what's out there right now, Your Honor.

21 Judge Isgur did set a hearing on -- well, set a
22 briefing deadline for January 10th for indispensable
23 parties/standing with respect to the four cases that are
24 pending before him, which I think is -- I don't want to put
25 words in your mouth -- what I heard maybe from you, that if

1 the presiding judge would determine whether or not those
2 parties are proper, it should be transferred over or not, to
3 the Miscellaneous Proceeding and then that hearing, Your
4 Honor, with respect to those four cases in front of Judge
5 Isgur is set for January 16th.

6 I just wanted Your Honor to be aware of that.

7 THE COURT: All right. Thank you.

8 Does that answer your question, Ms. --

9 MR. GREENDYKE: Judge?

10 THE COURT: Oh, Mr. Greendyke?

11 MR. GREENDYKE: Sorry, Judge. I was going to add
12 to what Mr. Boland just said. Late yesterday afternoon, if
13 not yesterday evening, Judge Isgur entered four Orders in
14 the cases that were pending before him, requiring any party-
15 in-interest to assert standing or indispensable party status
16 the file a notice stating a basis for indispensable party
17 status or standing in connection with the Jackson Walker
18 matters.

19 So he is fully addressing this potential standing
20 issue because, as you can hear from listening to Ms. Sall,
21 we have a disagreement about what the standing should be in
22 connection with these motions that they're seeking and Judge
23 Isgur sees that. He raised it at his Status Conference and
24 again, this occurred the afternoon after your recusal
25 hearing saying this was a primary issue to be resolved.

1 And just for purposes of the Record, I would --
2 and maybe assisting the Court, I would point the Court to a
3 decision out of the Southern District of New York, called
4 the *Sun Edison* case. It has a Westlaw cite of 2019 Westlaw
5 2572250. It is spot on with what we're looking at in these
6 cases here, based upon a determination by the Bankruptcy
7 Judge in New York that a party who is making a complaint
8 with regard to fees in that case, shouldn't have standing
9 and therefore, you know, it needed to go away.

10 That's what we're going to be dealing with, with
11 Judge Isgur on January the 10th and January the 16th and we
12 think that's part of the answer to your question on 2(d) on
13 your Order setting this Status Conference here.

14 THE COURT: What about in the other cases, Judge
15 Lopez's cases? What's happening over there?

16 MS. SALL: Your Honor, if I may?

17 MR. BOLAND: Your Honor?

18 THE COURT: Ms. Sall?

19 MR. BOLAND: I think it just --

20 MS. SALL: Yes. I just wanted to alert you that
21 unless I have the case wrong, there was an emergency motion
22 filed by a pro se claimant in the Sorrento case. It may
23 have been filed yesterday or the day before. It was filed
24 on an emergency basis. I don't think it's going to be heard
25 on an emergency basis, but there's another party who has

1 surfaced that's filed its own motion.

2 THE COURT: Do you know that case number?

3 MS. SALL: I don't, but Your Honor, if you give me
4 a few minutes, I will have someone give you potentially the
5 ECF reading, if we can get that for you? I should be able
6 to.

7 THE COURT: Okay. Thank you.

8 Mr. Greendyke, did you want to address the Court?

9 MR. GREENDYKE: Yes. I would say that Norton Rose
10 Fulbright does not represent Jackson Walker in the Sorrento
11 case. We have a conflict there, so we don't really have any
12 comment about the Sorrento case. And I'm not aware of what
13 Ms. Sall is referring to.

14 THE COURT: Okay.

15 MS. SALL: Your Honor?

16 THE COURT: Yes.

17 MS. SALL: The case number is -- sorry, 23-90085.

18 THE COURT: Okay.

19 MS. SALL: And I will try to get you the ECF on
20 that pleading, Your Honor. It's ECF 1656.

21 THE COURT: Thank you.

22 My question goes back to the other affected cases
23 in Judge Lopez's court. Are the parties addressing
24 indispensable party issue in those cases, or how is that
25 proceeding?

1 MR. BOLAND: Your Honor, maybe I can start with
2 that one. The short answer is we have not. We've been
3 working really hard to just understand the procedural
4 posture of everything, Judge, and we on our side have talked
5 about going back to Judge Lopez now that Judge Isgur has
6 entered an Order addressing the standing and indispensable
7 party issues and now that Your Honor has issued the Order
8 that we're here on today, also bringing up the standing and
9 indispensable party issues, Your Honor.

10 On the Jackson Walker side, we were thinking it
11 made sense to ask Judge Lopez to hold a similar Status
12 Conference, that way we can talk about these same issues to
13 have basically parties going in the same direction on that
14 point.

15 Again, from our perspective, you know, it's
16 important to determine the standing and indispensable
17 parties at the outset, because otherwise at the end of the
18 day, I'm not sure what we're doing if there's no
19 indispensable parties and/or people with standing.

20 THE COURT: Yeah, I'm really concerned about that.
21 I really am. I want to make sure we have everybody here
22 that should be here in dealing with these issues. I don't
23 want anybody to have to deal with this a second time or have
24 anybody left out.

25 Ms. Sall?

1 MS. SALL: Yeah, Your Honor, I also wanted to
2 mention to the Court because this might not be obvious, that
3 we have not filed anything in the Sorrento case. We don't
4 have a pending 60(b) motion in the Sorrento case. We may
5 look into it, you know, and are looking into it, but again,
6 we would not be -- the person who filed this pleading is on
7 their own at this point in time.

8 THE COURT: What is your response to Mr. Boland's
9 comments about the indispensable parties in Judge Lopez's
10 cases?

11 MS. SALL: Yes, Your Honor.

12 Your Honor, we view indispensable parties a little
13 different. When we filed our 60(b) motions to vacate, they
14 were filed and no party responded other than Jackson Walker.

15 So you know, we view the 60(b) motion per se as a
16 matter that is pending and affecting Jackson Walker and the
17 US Trustee.

18 Assuming that the motion is granted, the motions
19 to vacate, the Orders that are granted, that will return all
20 the parties to the status quo that existed before the Orders
21 were entered.

22 And in that regard, you know, what we had sought
23 all along is to, again, get back to the status quo so that
24 parties-in-interest would have the opportunity to review the
25 Jackson Walker fee applications, a right that they have

1 under 1109(b) an opportunity to object because they may be
2 objecting on their very different basis that they are
3 objecting. They could be seeking different remedies than
4 the remedies that we're seeking.

5 And so, again, we look at the 60(b) as a
6 standalone motion as if you have a case -- some other
7 pending case. Under this initial proceeding is going to be
8 populated with just our motion. It could be other people's
9 motions.

10 We participate in our motion and every pleading
11 has to be looked at independently.

12 So for those reasons, you know, we think that
13 limiting participation is just the potential recipients of
14 funds at this point. When it comes to our 60(b) motion, you
15 know, again, other than Jackson Walker and UCC at this point
16 on the 60(b) motions are the only two parties that need to
17 address those issues in the 60(b) motions or after -- after
18 a decision is made on the 60(b) motion.

19 You know, that's kind of where we differ. We're
20 differing in terms of who needs to participate. We think
21 every creditor involved under 1109(b) should have the
22 ability to review that fee app. They disagree. They at
23 that point, I think they're limiting the review to just
24 anyone who is entitled to recovery.

25 So that's -- in a nutshell, Your Honor, that's

1 kind of where we're at. We feel like -- we're not saying
2 that in understanding who the parties that may receive funds
3 is important. We agree that is an important exercise. But
4 we believe that it's premature at this point, as it relates
5 to the 60(b) motion.

6 We can move forward with Jackson Walker on
7 discovery on our motion that, again, no one has participated
8 in, other than Jackson Walker and us, but after -- assuming
9 we prevail on that motion, and those Orders are vacated, at
10 that point we believe that parties-in-interest have the
11 opportunity to participate in how the fee app is going to be
12 handled, what objections may be filed, what other motions
13 other parties may have.

14 So again, in a nutshell we do not believe there
15 are any indispensable parties on the 60(b) motions and
16 actually, you know, if the Court is willing to, we would be
17 willing to file some sort of brief to give you more context
18 and legal reasoning for our position.

19 MR. GREENDYKE: Judge, this is Bill Greendyke
20 again.

21 She's basically stated what the dispute is about.
22 Their view of these cases is totally pre-confirmation, like
23 no plan has occurred, no confirmation order has occurred.
24 If you look at the *Sun Edison* case, that's not the way the
25 law should be.

1 All these cases have confirmed plans and the
2 people who might be entitled to any kind of ultimate
3 recovery are determined by those plans and/or the
4 confirmation orders. And I think that's what this Court and
5 Judge Isgur and hopefully Judge Lopez will look at and agree
6 with. I think standing is very important and I don't think
7 we just open the door for everybody to look at the sugar and
8 the flour and the water before the cake was baked. The
9 cakes have been baked in these cases. And that's, I think,
10 the perspective that the Court needs to take on all the
11 motions.

12 MR. BOLAND: And Your Honor, I would just add to
13 that, the cases are clear, Your Honor, in a post-
14 confirmation world, you have to have constitutional
15 standing, prudential standing and 1109 standing, so I think
16 the disconnect here is that last piece, which is our
17 understanding that the US Trustee is focused on the 1109(b)
18 standing, but not the constitutional or prudential standing,
19 which applies in a post-confirmation world.

20 MS. SALL: And Your Honor, you know, what I would
21 again remind the Court and the parties is that those issues
22 don't arise until after the Orders are vacated, you know?
23 So you know, we can proceed, you know, and I would welcome
24 Jackson Walker's views on this, but the 60(b) motion, per
25 se, the one that we filed, the one that we want to

1 prosecute, there are no indispensable parties on that one.
2 You know, after the relief is granted, that is when we can
3 -- if you will, Your Honor -- duke it out as to who needs to
4 come in, you know, to participate or not participate.

5 So we review this as putting the cart before the
6 horse. You know, we need to be careful about limiting
7 parties' rights prematurely until we know what causes of
8 action the parties may have that frankly, Your Honor, we see
9 in a position to file rights.

10 So at this point, essentially it is premature and
11 dangerous to close the door on these parties and again, this
12 door can be opened later. You know, this door can be opened
13 after the UCC prevails on those (glitch in the audio) the
14 orders.

15 THE COURT: You broke up at the very end,
16 Ms. Sall.

17 MS. SALL: That this issue can be addressed after
18 the Court orders the 60(b) motion is granted or vacating the
19 Orders. At that point we can take this issue of who may
20 have a right. Because I think at this point it is
21 premature. You know, there's a lot of parties out there who
22 are following these proceedings. They're trying to figure
23 out how to get involved. They're not exactly sure how and
24 when and I would urge the Court to take a short pause, you
25 know, allow our 60(b) motion to go forward, allow there to

1 be, you know, addressed, prosecuted. You know, whatever
2 decision is made is made and after a 60(b) motion is granted
3 or whatever the decision is made there, after that, that's
4 when we take up who are these indispensable parties, who are
5 the parties who may come in and file whatever they may file
6 and where because at this point, you know, should they file
7 it here? Should they file it in the cases? How are we
8 going to transfer those motions that, like I said, Your
9 Honor, Sorrento was not a party to that.

10 THE COURT: Right. And as I stated before, that
11 decision will be made by the independent -- by the presiding
12 judge and whether they should participate or not and
13 pleadings could be filed in that case and that could be made
14 by that presiding judge, and of course, everyone would have
15 an opportunity to object and participate in that hearing.

16 At a minimum, as far as I can tell for today,
17 we're looking at the end of March before the US Trustee is
18 going to complete its review and filing of additional cases
19 to be joined into Miscellaneous Proceeding.

20 Am I correct about that, Ms. Sall?

21 MS. SALL: Yes, Your Honor.

22 THE COURT: Okay. And as I've been told just now
23 by Mr. Boland that there's going to be a hearing in January
24 by Judge Isgur and the Order that's been issued regarding
25 indispensable parties being joined -- or at least arguments

1 being made and maybe the decision by the Court in January,
2 so I think that would be helpful and also possibly motions
3 being filed in the other cases by Jackson Walker before
4 Judge Lopez has some similar determination.

5 I'm hopeful that that process will be completed at
6 least before March. By that time, we should have everybody
7 here and all the motions filed that are going to get filed.

8 Does anybody disagree with that?

9 (No audible response.)

10 THE COURT: And as much as I'd like to start
11 discovery today and open discovery formally and issue a
12 Scheduling Order, I'm hesitant to do that because of
13 everything that I've just heard. I want to make sure we
14 have all the pleadings on file, we have all the parties
15 present before the Court and all involved in this
16 Miscellaneous Proceeding.

17 For example, what is Judge Isgur in January
18 determines that the Maestas parties should be joined in this
19 Miscellaneous Proceeding and I issue an Order today opening
20 discovery, then they're going to be precluded from that, or
21 at least they're going to be behind the ball.

22 That's just one example of what could happen here.

23 MS. SALL: Your Honor, if I may? And again, I
24 don't know those parties are going to come in and bring that
25 motion here to this Miscellaneous Proceeding. You know, I

1 suspect that Jackson Walker would oppose, but I'm not like
2 -- you know, the UCC would like to continue again into this
3 investigation and we have done it informally, but there's
4 going to come a time that we're going to need formal
5 discovery.

6 And again, I already stated our position, which
7 is, you know, we're ready to go. We want to go ahead and
8 prosecute our 60(b) motion, you know, as soon as discovery
9 is completed. We don't believe that we need other parties
10 to do that. We don't believe that there are parties that
11 could be part of our 60(b) motion.

12 Again, we're not parties to the other motions that
13 they have filed. So we wanted -- we just want to treat our
14 own motions separately and go forward because the concern
15 that is being raised by Jackson Walker is who gets to be
16 paid, you know? And that is a valid point, but it's a point
17 that exists after, assuming we prevail. If we don't
18 prevail, we don't have to do anything else, Your Honor.
19 We're done. You know, we just go back.

20 But if we win, that's when other parties may have
21 the interest in coming in, you know? And determining what
22 it is the rights to these funds, if any.

23 THE COURT: Right, but again, this process can't
24 start at least until March or until the US Trustee has
25 completed filing all of its motions, correct?

1 MS. SALL: Well, like I said, Your Honor, we have
2 three different buckets. And you know, we are ready to
3 proceed with discovery with the 17 motions that it has
4 filed.

5 THE COURT: That's not going to happen. That's
6 not going to happen. I want all the cases in this
7 Miscellaneous Proceeding that are going to be tried to the
8 Court and I want to issue one Scheduling Order for all
9 parties. I don't want to have to do this over and over and
10 over again, every time a new case gets filed. It just makes
11 no sense.

12 So the sooner the US Trustee can file all of its
13 motions and file a notice on this Miscellaneous Proceeding
14 docket advising the Court and all parties-in-interest that
15 it's completed its investigation and has completed filing
16 any further motions, then we can proceed with a scheduling
17 conference. But not until then.

18 MR. BOLAND: Your Honor, we agree with your
19 suggestion on how to proceed with discovery. Your Honor,
20 we're happy to continue informally with the US Trustee to
21 keep the process moving, but we think Your Honor's thoughts
22 about making sure all the parties are here at one time makes
23 sense, Your Honor. So we're comfortable with that approach.

24 THE COURT: The last thing I want to do is slow
25 track this proceeding. I want to get this done sooner

1 rather than later. I think all the parties want that.

2 That's what I'm hearing, and I'm encouraged by that.

3 But you know, given what I've just heard from the
4 US Trustee, we're looking at least until March. If things
5 change, I'll be happy to entertain a motion and have a
6 status hearing and maybe schedule a scheduling conference.
7 But until such time, you know, I'm just going to reset
8 today's hearing for a further status conference mid-March
9 sometime and see where we are.

10 Like I said, if something happens earlier, the US
11 Trustee is permitted to file a notice with the Court and
12 request a scheduling conference, advising the Court and all
13 parties that it's completed its investigation, has filed all
14 the motions it's going to file, but not until then.

15 I want to go back. Is there any questions about
16 that, Ms. Sall?

17 MS. SALL: No, Your Honor. I -- you know, we will
18 -- if we need to come back to the Court to file a motion, we
19 will do that. Again, I'm just concerned about there may be
20 some formal discovery that we need to be able to formulate
21 some of our pending motions, the motions that we have not
22 filed, and that's a concern that I have.

23 THE COURT: Like I said, you know, happy to deal
24 with that if that should come up, but I'm not going to issue
25 a formal Scheduling Order today.

1 But like I said, you're free to file a motion
2 requesting a scheduling conference should the US Trustee
3 feel it's ready to proceed.

4 Okay? I want to give everybody an opportunity to
5 do what they need to do to get this case moving and I'm
6 happy to accommodate everyone in this case.

7 Now I want to get back to Mr. Greendyke's question
8 he asked me earlier on about how this can be handled between
9 this Court and the other Courts. I think there was a
10 question about, you know, what's going to happen in this
11 Court and what's going to happen in the Courts with the
12 presiding judges regarding dispositive motions, things of
13 that nature.

14 Is that your question, Mr. Greendyke? Did I get
15 that right?

16 MR. GREENDYKE: Yes, Judge. Yes, Judge.

17 THE COURT: Okay. So my understanding, the Order,
18 the Case Management Orders are issued in this case
19 depositing these particular proceedings in the Miscellaneous
20 Proceeding under which I'm now currently presiding over, is
21 -- you know, I'm going to issue a Scheduling Order. I want
22 to set deadlines.

23 And you know, we'll discuss this more at the
24 scheduling conference, but to give you a preview of my
25 thoughts, and I'm happy to hear arguments on it, is to issue

1 a Scheduling Order setting deadlines, setting forth such
2 things as filing a notice of consent and non-consent,
3 completion of discovery deadline, designation of experts,
4 things of that nature, filing of dispositive motions, but I
5 think the dispositive motions would need to be filed in each
6 individual case with the presiding judge reviewing and
7 deciding those motions.

8 I'm not -- I don't have that directive in the
9 Order to deal with anything dispositive. It's just
10 discovery. So I'm going to take everybody up to discovery.
11 If dispositive motions will get filed and that'll be
12 determined and heard by the presiding judge, unless I hear
13 something different from the presiding judge.

14 I'm happy to do them. I'm happy to do them, but
15 it's really up to the presiding judge because these cases --
16 each case is so different and so unique, I don't -- and I'm
17 not familiar with those cases, and I'm not the presiding
18 judge in those cases. I think it makes more sense for the
19 presiding judge to make those determinations.

20 But like I said, if the parties feel differently
21 and they can persuade the presiding judge to let me hear
22 them, happy to do it, but really I'm going to leave that
23 discretion to the presiding judge.

24 Does that answer your question, Mr. Greendyke?

25 MR. GREENDYKE: It does. Thank you, Judge.

1 THE COURT: Mr. Boland?

2 MR. BOLAND: It does, Your Honor. Thank you for
3 that, and going back to 2(a) real quick, one of your
4 comments was -- or one of the comments was wishing to
5 supplement, Your Honor. Obviously we do have agreement to
6 -- we had a stipulated withdrawal recommendation that we
7 proposed to Your Honor, that I know Your Honor is doing your
8 own report and recommendation. That was prior to the
9 Miscellaneous Proceeding.

10 You know, my client is also comfortable with Your
11 Honor handling the pretrial matters like you just discussed,
12 as well. I just wanted to state that for clarity.

13 THE COURT: Thank you, Mr. Boland.

14 Ms. Sall, any question about what I just stated?

15 MS. SALL: No questions, although I do have
16 another housekeeping matter.

17 THE COURT: Sure.

18 MS. SALL: I wanted to understand the timeline
19 possibly. I know that the Court has referenced that it may
20 be ready at some point soon to issue a report and
21 recommendation and I was just curious if the Judge -- if the
22 Court had a timeline on that, as well.

23 THE COURT: I'm hoping to get that done today,
24 maybe by tomorrow at the latest.

25 MS. SALL: All right. Thank you, Your Honor.

1 THE COURT: Okay. So let's look for a hearing
2 date for a further Status Conference. I have March 28th,
3 2024 at 9:00 a.m. Do you want to check your calendars? I
4 will be in McAllen, but we can hold this electronically.

5 If you want me to be in Houston, I can look for a
6 Houston date, but it's entirely up to you.

7 Mr. Boland?

8 MR. BOLAND: Your Honor, I was thinking of another
9 question. I apologize, but I want to circle back.

10 THE COURT: Go ahead. Sure.

11 MR. BOLAND: So I'll have to be rude and ask you
12 to repeat that, Your Honor.

13 THE COURT: March 28th, 2024 at 9:00 a.m.

14 MR. BOLAND: That's perfect.

15 MR. GREENDYKE: Same here, Judge. Thank you.

16 THE COURT: Okay. Ms. Sall?

17 MS. SALL: No issues, Your Honor. I will endeavor
18 to make sure my camera is working.

19 (Laughter)

20 THE COURT: Okay. That'd be great, wonderful.

21 All right. I will draft an Order and get that
22 entered so everybody can have that.

23 All right. Is there anything else we need to talk
24 about today?

25 MR. BOLAND: Your Honor, the issue I was debating

1 internally when I was distracted just a minute ago, we had
2 reached an agreement with the US Trustee. We basically
3 abated our response deadlines pending kind of the procedural
4 solutions here.

5 Your Honor, we envisioned with the opening of the
6 Miscellaneous Proceeding that at some point Your Honor would
7 enter, as part of the Scheduling Order, dates and deadlines
8 on responses and briefings, things of that sort.

9 If I'm mistaken, Your Honor, I'm obviously happy
10 to do whatever Your Honor pleases, but that was one thing we
11 had a question about procedurally.

12 If Your Honor was intending to address the
13 responsive briefing deadlines as part of that Scheduling
14 Order?

15 THE COURT: Yes. I did and I just gave you a few
16 examples of what my thought process was, but yes, I will
17 include that in there, absolutely.

18 MR. BOLAND: Thank you, Judge.

19 THE COURT: Yeah. Mr. Greendyke?

20 MR. GREENDYKE: No comment, Judge. Thank you.

21 THE COURT: Ms. Sall?

22 MS. SALL: No comment.

23 THE COURT: Ms. Eitel?

24 (No audible response.)

25 THE COURT: Is she still with us?

1 MS. EITEL: Nothing further, Your Honor. Sorry, I
2 was on mute.

3 THE COURT: Okay. All right. I think we've
4 covered everything we needed to cover today and I'm really
5 appreciative of everybody's participation. I'm hoping this
6 was helpful to everyone. Sure was helpful to the Court.

7 MR. GREENDYKE: It was. Thank you, Judge.

8 THE COURT: All right. And again, have a safe and
9 Happy Holiday and Best Wishes to everyone and we'll see
10 everybody in March, unless something else comes up.

11 MR. GREENDYKE: Can do, Judge. Thank you.

12 THE COURT: All right. Everyone is excused.

13 MS. SALL: Thank you, Your Honor.

14 THE COURT: Everyone is excused and the Court is
15 now in recess until 10:00 a.m.

16 (The parties thank the Court.)

17 (Hearing adjourned at 9:56 a.m.)

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1 *I certify that the foregoing is a correct*
2 *transcript to the best of my ability from the electronic*
3 *sound recording of the ZOOM/video/telephonic proceedings in*
4 *the above-entitled matter.*

5 */S/ MARY D. HENRY*

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